No. 80-1078

In the Supreme Court of the United States

October Term, 1980

ROLLINS INTERNATIONAL, INC.,
Petitioner,

vs.

MILTON STAUB AND THE OHIO NATIONAL BANK OF COLUMBUS, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Respondents believe that there is no legitimate question presented for review by this Court in accordance with the requirements of its Rule 17(c). Petitioner presupposes, in its Petition, that Respondents, in connection with their management and control of GHO, "had for some time been engaged in a course of commercial bribery" (p. 3 of Petitioner's brief), when in fact there was no such finding by the District Court, as a matter of either fact or law.

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STATEMENT OF THE CASE

Respondents, of course, do not accept Petitioner's repeated charge that Respondents somehow engaged in a course of "commercial bribery" justifying the granting of relief under §10(b) to Petitioner. The District Court rejected that argument in what the Court of Appeals for the Sixth Circuit characterized as a "well-reasoned and meticulous opinion," and of course the latter court affirmed the findings and conclusions of the District Court.

Respondents point out that (1) each of those practices and occurrences upon which Petitioner apparently places such great emphasis was weighed and considered by the District Court and rejected by it as a basis for §10(b) relief; (2) Petitioner is a sophisticated company with broad experience in the acquisition of other enterprises; (3) Petitioner employed an independent Big Eight accounting firm to audit GHO's financial records and those of its subsidiaries, and that audit was carried out in a time-consuming and thorough fashion; (4) the audit report set forth a "disclaimer" which, according to Petitioner's own vice president and treasurer, would cause him to proceed with caution on Petitioner's behalf; (5) in fact, he did advise Petitioner that the acquisition of GHO by Petitioner would not be a "good deal" for it, but, despite such advice, it proceeded with the transaction; (6) the resignation of Leonard Weakley as counsel for GHO's subsidiary, Incore—an occurrence upon which Petitioner attempts to lay such great weight—was an action initiated by neither GHO nor Incore, and, in any event, produced no additional liabilities for either; and (7) GHO's downfall—the apparent inspiration for Petitioner's §10(b) claims—came about not because of any misrepresentations or fraud on Respondents' part but because of Petitioner's own mismanagement and ineptitude.

All of these points were thoroughly presented, briefed and argued in the District Court and the Court of Appeals. Both properly concluded that there simply is nothing in the record to support Petitioner's §10(b) claims.

ARGUMENT

Petitioner argues that the question "of great importance on which this Court has made no direct pronouncement is the materiality of domestic corrupt business practices within the disclosure requirements of §10(b) . . . and Rule 10b-5 thereunder." The immediate and conclusive response to that is that there was no *finding* by the District Court that Respondents engaged in any course of "corrupt business practices." On the contrary, in dealing with the occurrences upon which Petitioner lays such great emphasis, the Court specifically found that there had been no material misrepresentations, omissions or fraudulent intent. (See, *e.g.*, the portions of the District Court's opinion set forth on pages A36-A39 of Petitioner's brief.)

More specifically, regardless of how one characterizes the acts of which Respondents complain, the District Court found that Petitioner's evidence failed to support a finding of any scienter on Respondents' part necessary to support a §10(b) claim under the pronouncement of this Court in *Ernst & Ernst v. Hochfelder*, 425 U.S. 185 (1976). The Court of Appeals agreed.

In sum, therefore, Petitioner has not met the criterion set forth in Rule 17(c) of this Court's rules. There is no "important question of federal law" which should be settled by this Court. To find otherwise would be to require this Court to re-try the issue of whether or not there was "commercial bribery" on Respondents' part—a procedure certainly not within the purview of Rule 17. Furthermore, this Court has decided in *Hochfelder* that scienter is a necessary element to support a §10(b) claim. In view of the conclusions of both lower courts that, however one characterizes the acts of Respondents about which Petitioner complains, that element is lacking, there simply is no basis upon which this Court can grant certiorari.

CONCLUSION

There being no important question of federal law which this Court should settle within the meaning of Rule 17(c) of the Rules of this Court, Petitioner's Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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